

**REMARKS**

The Office Action mailed January 24, 2008 has been received and reviewed. Claims 1-6, 10-13 and 16-27 are pending with claims 18-22 having been withdrawn subject to an election requirement. Claims 1-6, 10-13, 16, 17 and 23-27 are rejected. Claims 1, 10 and 23 are amended. Claim 27 is cancelled. The Applicant submits that the claims are now in condition for allowance for the reasons set forth hereinafter.

Rejection Of Claims 1-6, 8-13, 16, 17 and 23-27 Under 35 U.S.C. § 112, 2nd Paragraph

Claims 1-6, 8-13, 16, 17 and 23-27 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Examiner states that the claims contain subject matter that is not described in the specification in such a way as to convey to one skilled in the art that the inventor had possession of the claimed invention. The Examiner states that claims 1 and 10 "recite the limitation" of "cylindrically containerized beverage pathways," and states that although the specification states (p. 7, 0019) that the shape of the container is cylindrical and suitable for dispensing from a vending machine that is structured to vend twelve ounce aluminum beverage cans, that does not mean that all vending machines structured to vend twelve ounce aluminum beverage cans comprise "cylindrical pathways." The rejection as to claim 1 is overcome by amending claim 1 to delete the phrase since it is redundant. Notably, claim 10 does not recite the phrase "cylindrically containerized beverage pathways." The Applicant submits that both claims 1 and 10 recite a "vending machine structured to vend cylindrically-containerized beverages," which is structure well known to those in and out of the art. Respectfully, the specification meets the requirement of § 112, first paragraph.

The Examiner states that claim 23 recites the limitation "readily," but states that the specification does not support "the ease with which one would have access to the inside of the container." The rejection is overcome by amendment of claim 23 to recite

that the inside of the container is accessible for the intended consumption of the contents. Any person, including those of skill in the art, understand the accessing of a container for the intended consumption of the product within in anticipation of knowing what is in the container by virtue of having specifically purchased the product for consuming its contents.

Rejection Of Claims 1-9 And 23-27 Under 35 U.S.C. § 112, First Paragraph

Claims 1-9 and 23-27 are rejected under 35 U.S.C. § 112, second paragraph, as being unclear. Specifically, claim 1 is rejected for the recitation "cylindrically containerized beverage pathways," which has been deleted from claim 1. Claim 23 is rejected for the recitation of "readily," which has been deleted from claim 23. The Applicant notes that claim 7 was cancelled. The rejection is otherwise overcome with deletion of the cited phrases, respectively, from claims 1 and 23.

Rejection Of Claims 23-25 Under 35 U.S.C. § 102(b) (Howes, et al.)

Claims 23-25 are rejected under 35 U.S.C. § 102(b) as being anticipated by Howes, et al. ("Howes") for the reasons set forth in the Office Action mailed November 15, 2006. The Examiner also states, in response to the Applicant's previous response, that "the locking mechanism of Howes which the Applicant argues prevents the prize from being readily accessible would have been no different than a means of tamper evidence, which prevents inadvertent opening of the prize bearing container." The Examiner also reiterates the rejections made in this Office Action under § 112, and adds that Howes teaches a pull-tab to access the interior of the container. The Applicant acknowledges with appreciation the Examiner's comparison of the locking mechanism of Howes with a "means of tamper evidence," but asserts that claims 23-25 do not recite either a locking mechanism or a tamper evidence device. Howes, however, is specifically drawn to a device that is structured to maintain in secrecy a prize element that the consumer is intended to be unaware of at the time of purchase.

By contrast, and as reflected in the amendments of Claim 23, the claimed container contains two disparate products that are known to the consumer at the time of purchase for purposeful consumption of those disparate products for which money was paid. Consistent therewith, an opening mechanism to the container provides access to the container to enable the purposeful and intended consumption of the contents of the container. Howes fails to disclose that which is claimed, and claims 23-25 are not anticipated.

Rejection Of Claims 23 And 24 Under 35 U.S.C. § 102(b) [Bezek, et al.]

Claims 23 and 24 are rejected under 35 U.S.C. § 102(b) as being anticipated by Bezek, et al. (US 6,472,007) ("Bezek"). The Examiner states that Bezek discloses a vendable container comprising a sealed product enclosing portion (figure 1, an opening mechanism (26) and at least two disparate products. The rejection is overcome by amendment of claim 23 to recite an opening mechanism providing access to the interior of the container other than through the top or the bottom of the container. By contrast, Howes discloses a container where the top is removed for access to the interior of the container. The claims are not anticipated, therefore.

Rejection Of Claims 23 And 24 Under 35 U.S.C. § 102(b) [Rea, et al.]

Claims 23 and 24 are rejected under 35 U.S.C. § 102(b) as being anticipated by Rea, et al. (US 5950913) ("Rea"). The Examiner states that Rea discloses at least two disparate products which are food products (P) in a sealed product enclosing portion with opening means for accessing the interior of the container. The Examiner asserts that the container of Rea would have been capable of being dispensed from the containerized beverage pathways of vending machines. As amended, claim 23 requires ready-to-consume products contained in the vendable container. Rea discloses a collection of dough, spices and icing that the consumer must combine and back prior to consumption of the intended end product. Claims 23 and 24 are not

anticipated, therefore.

Rejection Of Claims 1, 10 and 23 Under 35 U.S.C. § 103(a)

Claims 1, 10 and 23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Warner (US 2384863) in view of Savage, et al. (US 20030071036) ("Savage") and Kirkland (US 6006945). The Examiner states that Warner discloses a vending machine capable of dispensing beverages and sandwich-like products, and further teaches wrapping sandwiches in a napkin and placing them in a cardboard cylinder, but that Warner is silent regarding a completely sealed container. The Examiner states that Savage teaches the conventionality of sealing a vendable sandwich-like product. The rejection is traversed on the grounds that a *prima facie* case of obviousness cannot be established.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on the applicant's disclosure. In re Vaack, 20 U.S.P.Q. 2d 1438 (Fed. Cir. 1991); MPEP 706.02(j). While Warner discloses a vending machine for heating and dispensing hot dogs, the Examiner agrees that Warner does not disclose enclosing the hot dog in a sealed enclosure as claimed. In fact, Warner is directed to a device for heating a hot dog that has condiments already placed on the hot dog; consequently, the hot dog cannot be placed in an sealed and enclosed container since heating product would cause the moisture in the condiments and the hot dog to build up steam pressure and a possible explosion might occur. Thus, Warner actually teaches away from placement of a hot dog in a sealed enclosure and

those of skill in the art would clearly find no relevant teaching in Warner for producing the claimed invention.

Further, Savage discloses packaging for enabling the contents of the pack to be microwaved; however, Savage provides no disclosure whatever of placement of a sandwich in a cylindrical container for dispensing in a vending machine as claimed. Therefore, Savage cannot be combined with Warner to obviate that which is claimed. Inasmuch as Warner and Savage fail in the first instance to disclose or suggest a sealed enclosure for a sandwich in a cylindrical container as claimed, one of skill in the art would find no motivation to include an opening mechanism, as taught by Kirkland, for a carrier as described in Warner that is already, and necessarily, open at both ends to access the hot dog. Claims 1, 10 and 23 are not obviated by the cited references.

Rejection Of Claims 1-4, 6, 8-11, 13, 16, 17, 21 And 24 Under 35 U.S.C. § 103(a)

Claims 1-4, 6, 8-11, 13, 16, 17, 21 and 24 are rejected as being unpatentable over Nedblake in view of Bezek and Yu (US 5279841). The Examiner states that Nedblake teaches a container sized and shaped for being dispensed through pathways of a vending machine structured to vend containerized beverages, the container having a non-beverage food product enclosing portion (14), a top (34), a bottom (32) to provide a unitarily sealed enclosure, and at least at minimum two elements that form a chamber which would have to be separated. The Examiner states that claims 1, 10 and 23 differ from Nedblake in reciting a food product enclosing portion having an opening mechanism, which is taught by Bezek. The Examiner states that Bezek also teaches an opening mechanism on each compartment for breaching the sealed enclosure which contains disparate foods. The Examiner states that Yu is cited as further evidence of a conventional opening mechanism for vendable compartmentalized containers, and that Yu teaches a combination package that can be equal to the size of an aluminum can filled with a soft drink, thereby making it vendable. The Examiner states that Yu teaches combinations of disparate food products in the container. The rejection is

traversed on the grounds that a *prima facie* case of obviousness cannot be established.

Regarding claim 1, the Examiner asserts that Nedblake teaches a container sized and shaped for dispensing from the pathways of a vending machine structured to vend cylindrically containerized beverages, citing column 2, lines 47-57 of Nedblake.

However, the cited text of the Nedblake specification makes clear that the lower container 14, which contains the sandwich, may be combined with a conventional single serving soft drink bottle to allow the unitary package 10 to be dispensed from vending machines, making it clear to one of skill in the art that the lower container 14 is not itself structured for being dispensed from such structured vending machine without being coupled to a bottle. It is clear to one of skill in the art that the flattened, disk-shaped container 14 of Nedblake would not be dispensible through pathways of a vending machine structured to vend cylindrically containerized beverages. While Nedblake teaches a flattened, disk-shaped container for containing and enclosing a sandwich product, Nedblake fails to teach or suggest a sandwich containing enclosure that is dispensible as claimed. Bezek provides no teaching of providing a sandwich product in a vendable container as claimed; nor does Yu. In fact, Yu discloses only structure for containing drinks and combinations of varying types of drinks which, to those of skill in the art, would be known to require opening mechanisms, and possibly packaging requirements, that enable the consumer to open the two beverage-containing compartments in a manner to avoid spillage or mixing, etc. Therefore, one of skill in the art would find no relevant teaching or motivation to provide a cylindrical, vendable container as structurally claimed for dispensing a sandwich-like product, and claims 1-4, 6, 8 and 9 are not obviated.

Claim 10, like claim 1, recites a vendable cylindrical container structured for vending through pathways of a vending machine structured to vend cylindrically containerized beverages and having a non-beverage food product-enclosing portion, and having at least two non-beverage food products contained in the container, one being a sandwich-like product. Nedblake discloses a packaging device for coupling a small, sandwich-retaining container that is not in itself sized for dispensing as claimed

with a beverage-retaining container. It is the beverage-containing portion that allows the package to be dispensible through a vending machine as Nedblake teaches. Therefore, one of skill in the art would not find Nedblake relevant to providing a cylindrical container that has two disparate, non-beverage food products in a cylindrical container that is sized for dispensing in the manner claimed. While Bezek discloses non-beverage products in a container, Bezek fails to provide any relevant disclosure for providing a container for a sandwich-like product as claimed; nor does Yu for the reasons stated previously. Therefore, one of skill in the art would find no relevant teaching or motivation to provide a cylindrical, vendable container for a sandwich and other non-beverage product as structurally recited in claim 10, and claims 10, 11, 13, 16 and 17 are not obviated.

Claim 23, as amended, requires an opening for entering the interior of the container other than through the top or bottom. Not only do Nedblake, Bezek and Yu fail to provide one of skill in the art any relevant teaching of cylindrical, vendable containers, but none of the references teaches an opening mechanism as required by claim 23. Since Nedblake and Yu both disclose containers for beverages, the opening mechanism of claim 23 would not be the appropriate selection as determined by one of skill in the art and, to that end, Nedblake and Yu would teach away from an opening mechanism as claimed. Therefore, claims 23 and 24 are not obviated.

Responsive to the Examiner's assertion that Nedblake, Bezek and Yu are not restricted to the particular food components, but are generic teachings, the Applicant respectfully disagrees. Notably, the Examiner's citation to Nedblake at column 1, line 22, concerning soup and salad combinations describes merely an appreciation or knowledge that certain foods may be desired for combined purchase, but Nedblake provides no specific teaching for the claimed invention there or anywhere else throughout the Nedblake disclosure. Additionally, Bezek is directed to snack foods of the type manufactured by Frito-Lay®, which does not include sandwiches, and Yu is very specifically directed to combinations of potable liquids, not sandwiches or non-beverage products.

Rejection Of Claim 27 Under 35 U.S.C. § 103(a)

Claim 27 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Nedblake, Bezek and Yu (as applied above), and further in view of Pinyot (US 6971521). The rejection is made moot by the cancellation of claim 27.

Rejection Of Claim 5 Under 35 U.S.C. § 103(a)

Claim 5 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Nedblake, Bezek and Yu (as applied above) and further in view of Sanford. The Examiner states that Nedblake is silent in teaching a sandwich further enclosed in a wrapper, which is taught by Sanford. The Examiner states that Sanford also teaches a first compartment containing the sandwich and a second compartment for a second disparate food item, such as candy, and that it is conventional to wrap a sandwich and place the wrapped sandwich in a container for freshness. The rejection is traversed for the reasons stated above with respect to claim 1 and the failure of Nedblake, Bezek and Yu to establish, in combination, a *prima facie* case of obviousness. Notably, neither Nedblake, Bezek or Yu disclose wrapping a sandwich-like product for placement in a vendable container as claimed.

Additionally, the Applicant repeats the previous argument that Sanford cannot be combined with Nedblake because Sanford teaches a wrapper (5) of waxed paper placed about a sandwich, which is then placed in an outer envelope (1) providing a packaging means for a sandwich that includes a follower or extruder sized comparably to the sandwich to facilitate extrusion of the sandwich from the envelope. The Examiner appears to suggest that one of skill in the art would consider only the wrapper (5) of Sanford in formulating a combination of Nedblake and Sanford to obviate the claim. However, all of the packaging features as taught by Sanford must be considered by the Examiner, and by the so-called person of skill in the art, when attempting to make a combination of Sanford with Nedblake. The teachings of cited references may not be cherry-picked in order to construct an obviousness rejection. Therefore, it would be clear to one of skill in the art that the envelope of Sanford could not be placed in the



lower container (14) of Nedblake and, consequently, the references cannot be combined to obviate the claim.

Rejection Of Claims 1-4, 6, 8-11, 13, 16, 17, 21 And 27 Under 35 U.S.C. § 103(a)

Claims 1-4, 6, 8-11, 13, 16, 17, 21 and 27 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Pinyot in view of Nedblake, Bezek and Yu. The Examiner states with respect to claims 1 and 10 that Pinyot teaches the claimed container except for a sandwich product, but that Nedblake teaches the sandwich product element. The Examiner states that since Pinyot and Nedblake are similar, it would be obvious to place a sandwich as taught by Nedblake in a container as taught by Pinyot. The rejection is traversed.

With respect to claim 1, the Examiner correctly notes that Pinyot does not teach or suggest the placement of a sandwich in a vendable container. As argued previously, Nedblake does not disclose or teach a container for a sandwich that is itself vendable. Therefore, one of skill in the art would find nothing relevant or instructive in Pinyot or Nedblake to provide a sandwich product with the claimed size and dimensions for containment in a vendable container as claimed. That is, claim 1, as amended, requires a sandwich-like product that is sized and dimensioned to conform to the size and dimension of the vendable container. While the sandwich of Nedblake conforms to the size and dimension of the lower container (14), the lower container is not in itself vendable. Thus, even if the lower container 14 of Nedblake were combined with the containers of Pinyot, the vendable product recited by claim 1 would not be obviated.

With respect to claim 10, the Applicant reiterates that Nedblake does not disclose a sandwich product in a container that is itself dispensible and, therefore, Nedblake cannot be combined with Pinyot to obviate claim 10.

Claim 23, as amended, requires an opening mechanism other than through the top of the container which is not taught by either Pinyot or Nedblake. One of skill in the art would find no suggestion or instruction in Pinyot or Nedblake to provide the claimed opening and, therefore, claim 23 is not obviated.

Rejection Of Claims 1-4, 6, 7-13 And 16-17 Under 35 U.S.C. § 103(a)

Claims 1-4, 6, 7-13, 16 and 17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Bezek, in view of Nedblake, Yu and Kafentzis. The Examiner states that regarding claims 1 and 10, Bezek teaches a container sized and shaped for dispensing as claimed, but does not disclose a sandwich-like product, which is taught by Nedblake. The Applicant notes again Nedblake teaches a sandwich product positioned in a lower container 14 that is itself not sized for vending. Nothing in Bezek provides any disclosure or suggestion that a non-vendable sandwich-retaining container as taught by Nedblake should be combined with the containers of Bezek. More specifically, neither Bezek nor Nedblake disclose a sandwich that is sized and dimensioned to conform to the size and dimension of the vendable container, and claim 1 is not obviate for that reason. Similarly, claim 10 recites a sandwich product sized in dimension to conform to a vendable sealed enclosure and Nedblake does not disclose a sandwich product in a container that is itself dispensable. Therefore, Nedblake cannot be combined with Bezek to obviate claim 10.

Rejection Of Claim 5 Under 35 U.S.C. § 103(a)

Claim 5 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Bezek, Nedblake, Yu and Kafentzis, and further in view of Sanford. The Examiner states Bezek and Nedblake teach a sandwich in a vendable container as noted above with respect to claim 1, and that Sanford teaches a wrapper for the sandwich. The Applicant again argues, for the reasons stated above with respect to claim 1, that neither Bezek nor Nedblake disclose to one of skill in the art a vendable container with a sandwich sized to conform to the dimensions of the vendable container. Additionally, as stated before, the totality of the invention taught by Sanford, i.e., an envelope, inner wrapper and follower, cannot be combined with the lower container of Nedblake. Therefore, Bezek, Nedblake and Sanford do not obviate claim 5. Yu and Kafentzis fail to provide any instructive disclosure to one of skill that renders a sandwich product vendable container as claimed and, again, claim 5 is not obviated by any of the references.

Rejection Of Claims 23, 25 And 26 Under 35 U.S.C. § 103(a)

Claims 23, 25 and 26 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kaufman in view of Kirkland. The Examiner states that Kaufman discloses a container comprising two comestible products (a T-shirt and money) and that the container is to be dispensed in a vending machine that also vends food products such as soda. The Examiner states that Kaufman is silent in teaching an opening mechanism accessing the interior, which is taught by Kirkland and it would have been obvious to combine the opening mechanism of Kirkland with the container of Kaufman. The rejection is traversed. Kaufman discloses a T-shirt that is compressed to a cylindrical shape and size to be vendable from a machine, but the T-shirt (i.e., consumable product) is contained in packaging material that is shrink wrap (42). Shrink wrap is well known to those of skill in the art to not be vendable, nor to constitute a vendable container. Thus, Kaufman fails to teach that which is claimed. Claims 23, 25 and 26 are not obviated, therefore.

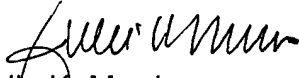
Rejection Of Claim 26 Under 35 U.S.C. § 103

Claim 26 is rejected under 35 U.S.C. § 103 as being unpatentable over Howes. The Examiner states that Howes discloses a prize, not a prize notification, and that the claim limitations are thus met. The rejection is overcome by amendment of claim 23. As noted above, Howes is specifically drawn to a device that is structured to maintain in secrecy a prize element that the consumer is intended to be unaware of at the time of purchase. By contrast, and as reflected in the amendments of Claim 23, the claimed container contains two disparate products that are known to the consumer at the time of purchase for purposeful consumption of those disparate products for which money was paid. Consistent therewith, an opening mechanism to the container provides access to the container to enable the purposeful and intended consumption of the contents of the container. Howes fails to disclose that which is claimed, and claims 23-25 are not anticipated.

**CONCLUSION**

The Applicant submits that claims 1-6, 8, 9, 11-14, 16, 17 and 23-26 present patentable subject matter. Reconsideration and allowance are requested.

Respectfully submitted,



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